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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

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AMERICAN BANKERS INSURANCE
COMPANY OF FLORIDA,

Plaintiff,

vs.

ASHLEY ERICKSON,

Defendant

ASHLEY ERICKSON,

Counterclaim Plaintiff,

vs.

AMERICAN BANKERS INSURANCE
COMPANY OF FLORIDA,

Counterclaim Defendant,

Cause No. CV-15-29-BU-SEH

**DEFENDANT ASHLEY
ERICKSON'S ANSWER TO FIRST
AMENDED COMPLAINT FOR
DECLARATORY RELIEF
AND COUNTERCLAIM**

Defendant Ashley Erickson hereby answers Plaintiff American Bankers Insurance Company of Florida's First Amended Complaint as follows:

ANSWER TO ALLEGATIONS IN PLAINTIFF'S FIRST AMENDED COMPLAINT

1. Defendant Ashley Erickson lacks sufficient information and knowledge at this time to admit or deny the allegations of Paragraph No. 1 and, therefore, the same are denied.
2. The allegations of Paragraph 2 are admitted.
3. Defendant Ashley Erickson denies that Plaintiff has carried its burden of establishing diversity jurisdiction. Defendant Ashley Erickson admits that the parties are diverse.
4. Defendant Ashley Erickson contends that American Bankers has a duty to defend and indemnify her against the allegations contained in the Counterclaims against her in the underlying action.
5. Defendant Ashley Erickson denies that Plaintiff has met its burden of establishing that the amount in controversy exceeds \$75,000. The remainder of the allegations of Paragraph 5 are admitted.
6. The allegations of Paragraph 6 are admitted.
7. The allegations of Paragraph 7 are admitted.
8. The allegations of Paragraph 8 are admitted.

9. Defendant Ashley Erickson admits that the gravamen of the claims against her by BJD Properties LLC in the underlying action are for contribution. She denies the remainder of the allegations set forth in Paragraph 9.

10. The allegations set forth in Paragraph 10 are admitted to the extent they allege that Ashley Erickson has been sued by BJD Properties LLC for contribution in the underlying action. She denies the remainder of the allegations set forth in Paragraph 10.

11. The allegations of Paragraph 11 are admitted.

12. The allegations of Paragraph 12 are admitted.

13. Defendant Ashley Erickson denies the allegations in Paragraph 13.

She has not been sued by QE for negligence. She has been sued by BJD Properties LLC for contribution.

14. Defendant Ashley Erickson denies the allegations in Paragraph 14.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE **LACK OF JURISDICTION**

Plaintiff has not established subject matter jurisdiction.

SECOND AFFIRMATIVE DEFENSE **ABSTENTION**

This case concerns state law issues of insurance regulation and protection of Montana insurance consumers and should be decided by a state court.

THIRD AFFIRMATIVE DEFENSE
AMBIGUITY

The policy provisions relied upon by Plaintiff are ambiguous and must be construed against the insurer.

FOURTH AFFIRMATIVE DEFENSE
REASONABLE EXPECTATIONS

Plaintiff's interpretation of its insurance policy would contravene the objectively reasonable expectations of the insureds.

FIFTH AFFIRMATIVE DEFENSE
CONTRARY TO PUBLIC POLICY

Plaintiff's interpretation of its insurance policy would contravene public policy.

COUNTERCLAIM

1. Counterclaimant Ashley Erickson is an individual residing in Gallatin County, Montana.
2. Upon information and belief, Counterdefendant American Bankers Insurance Company of Florida ("American Bankers") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located in Atlanta, Georgia. American Bankers is authorized to sell insurance in the State of Montana.

3. Although Defendant Ashley Erickson denies that American Bankers has met its burden of establishing the amount in controversy exceeds \$75,000, to the extent the Court determines that the jurisdictional threshold for American Bankers Complaint has been established, then it is also established for Ashley Erickson's counterclaim against American Bankers.

4. Venue is proper in this Court under 28 U.S.C. 1391 because a substantial part of the events or omissions giving rise to the counterclaims stated herein occurred in Gallatin County, Montana.

5. Ashley Erickson is the mother of minor child QE.

6. In August 2014, QE was injured in a fall at a property owned by BJD Properties LLC because the property was in an unsafe and unreasonably dangerous condition.

7. In a case captioned *Erickson v. BJD Properties*, currently pending in the Montana Eighteenth Judicial District Court under Cause No. DV 14-846A, QE's parents sued BJD Properties LLC for QE's injuries.

8. BJD Properties LLC counterclaimed against Ashley Erickson seeking contribution ("the underlying action").

9. American Banker is Ashley Erickson's liability insurer pursuant to Policy No. RIN186797301 ("the Policy").

10. American Banker is currently defending Erickson in the underlying action against the contribution claim by BJD Properties LLC.

11. However, American Banker has initiated this declaratory relief action seeking a determination that no coverage exists under the Policy for the claims against Ashley Erickson in the underlying action.

12. A real case or controversy exists between the parties as to whether American Banker has any duty to defend or indemnify Ashley Erickson in the underlying action. Ashley Erickson seeks a declaration of American Banker's duty under the Policy to defend and indemnify her in connection with any liability she may incur in the underlying action. Ashley Erickson is not being sued by QE for bodily injuries in the underlying action, therefore the policy provisions relied upon by Plaintiff in this case are either inapplicable, or ambiguous. Any ambiguity must be construed against the insurer.

PRAAYER FOR RELIEF

WHEREFORE, having made her counterclaim for declaratory relief, Ashley Erickson prays:

1. For a determination that American Banker owes a duty under its Policy to defend and indemnify Erickson in connection with the underlying action.

2. For attorney fees and costs.
3. That the Court grant such other legal or relief as the Court deems just and proper.

DATED, this 31st day of August 2015.

/s/ Lindsay C. Beck
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